

GERALD ESTELL PROCTOR

DECEMBER 2 (legislative day, NOVEMBER 18), 1943.—Ordered to be printed

Mr. STEWART, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 1379]

The Committee on Claims, to whom was referred the bill (H. R. 1379) for the relief of Gerald Estell Proctor, having considered the same, report favorably thereon and recommend that the bill do pass.

The facts will be found fully set forth in House Report No. 434, Seventy-eighth Congress, first session, which is appended hereto and made a part of this report, and your committee concur in the recommendations of the House.

[H. Rept. No. 434, 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 1379) for the relief of Gerald Estell Proctor, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 5, after the word "Proctor" insert a comma and add the words "of Princeton, Kentucky,".

Page 1, line 6, strike out the figures "\$5,000" and insert in lieu thereof the figures "\$2,500".

Page 1, line 6, strike out the words "any claim" and insert in lieu thereof the words "all claims".

The purpose of the proposed legislation is to pay to Gerald Estell Proctor, of Princeton, Ky., the sum of \$2,500, in full settlement of all claims against the United States for personal injuries caused him by the negligent explosion of a charge of dynamite by employees of the Work Projects Administration, on road project No. 5882-70, in Livingston County, Ky., on October 17, 1941.

STATEMENT OF FACTS

On October 17, 1941, and for some time prior thereto, Work Projects Administration employees, together with employees of the Kentucky Department of Rural Highways, were engaged on a road-construction project along what is commonly known as the Paradise and Grove Chapel Road in Livingston County, Ky. During the course of operations, it became necessary to use dynamite to remove rock from the ditch line. Six holes were drilled to a depth of 2 feet each and loaded with one and one-half sticks of dynamite. Employees were then dispatched to stations along the road on both sides of the place where the blast was about to occur for the purpose of stopping approaching traffic. One of the

employees who was charged with the duty of stopping traffic, while engaged in conversation with a third party, failed to notice or stop claimant's automobile which was proceeding in the direction of the impending explosion; and the explosion occurred as claimant's automobile reached a point about 15 feet from the drilled holes.

The medical evidence discloses that, as a result of the explosion, there is a partial deafness in the left ear and a complete deafness in the right ear of the claimant. It further appears that his deafness will be permanent, but that at the time of the explosion his hearing was normal. The claimant was 33 years old when the explosion occurred, and was a traveling salesman.

The Federal Works Agency admits the Government's liability resulting from the negligence of the Works Projects Administration employee in failing to warn the claimant of the impending explosion, and recommends enactment of relief legislation in an amount commensurate with the actual injuries sustained. However, because such agency had before it meager evidence regarding the extent of the claimant's injuries, it suggested that your committee require additional evidence reflecting the nature and gravity of such injuries. This your committee have done, and the medical evidence is ample to show that the claimant, a young man, has lost his hearing, completely in one ear and partially in the other, as a result of the explosion, that such deafness is permanent, and that there is the possibility that he will, in course of time, become totally deaf. Your committee feel that \$2,500 is an entirely reasonable sum to be awarded him for such injuries.

Your committee, therefore, recommend favorable consideration of the proposed legislation.

Appended hereto is the report of the Federal Works Agency, together with other pertinent evidence, all of which is made a part of this report.

FEDERAL WORKS AGENCY,
Washington, September 23, 1942.

Hon. DAN R. McGEHEE,

Chairman, Committee on Claims, House of Representatives.

DEAR MR. McGEHEE: Reference is made to your letter of August 18, 1942, to the Work Projects Administration, enclosing copies of H. R. 7308, a bill for the relief of Gerald Estell Proctor, and requesting a report thereon.

This agency's report is as follows:

The bill proposes to appropriate "to Gerald Estell Proctor the sum of \$5,000, in full settlement of any claim against the United States for personal injuries caused him, by the negligent explosion of a charge of dynamite by employees of the Work Projects Administration, on road project No. 5882-70, in Livingston County, Ky., on October 17, 1941."

The Work Projects Administration's administrator for Kentucky has investigated the matter and has submitted a report thereon which discloses that, on October 17, 1941, and for sometime prior thereto, Work Projects Administration employees, together with employees of the Kentucky Department of Rural Highways, were engaged on a road construction project along what is commonly known as the Paradise and Grove Chapel Road in Livingston County, Ky.; that, during the course of project operations, it became necessary to use dynamite to remove rock from the ditch line; that six holes were drilled to a depth of 2 feet each and loaded with 1½ sticks of dynamite; that employees were then dispatched to stations along the road on both sides of the place where the blast was about to occur for the purpose of stopping approaching traffic; that one of the employees who was charged with the duty of stopping traffic, while engaged in conversation with a third party, failed to notice or stop claimant's automobile which was proceeding in the direction of the impending explosion; and that the explosion occurred as claimant's automobile reached a point about 15 feet from the drilled holes.

The attending physician, in a statement dated June 24, 1942, declares that: "This is to certify that about November 1, 1941, I was consulted by the above-named for injury, which he received, October 17, 1941, while driving along the highway in Livingston County, Ky. After a history of the injury was given me, I made a physical examination and found him to be practically deaf with a perforation in the tympanum of the left ear. This condition doubtless happened at the time of the injury due to concussion produced by the explosion of the dynamite. I also found that his power of balance was disturbed. It was difficult for him to walk without losing his power of balance. I continued to treat him and observe him for several weeks with little or no improvement with regard to his hearing in the left ear.

"I think this injury has produced a deafness and perhaps other remote changes which are permanent and so far as I know, incurable."

Several other statements, some of which are under oath, concerning the extent of the injuries sustained by claimant have been submitted by his physician. It is noted, however, that such statements contain no definite detailed diagnosis of the extent of the injuries or a reasonably definite detailed prognosis relating to temporary total disability or partial disability, and the percentage of permanent partial disability. Efforts to obtain the above information from claimant, the attending physician, and his attorney, by the Work Projects Administration investigative staff for Kentucky, have been unavailing. Moreover, the Work Projects Administration State compensation officer states that, "The attitude displayed by the claimant, his attorney, and his physician, * * * greatly stimulates the natural doubt relative to the physical injury alleged by Mr. Proctor."

The record does disclose that, although the accident occurred on Friday, October 17, 1941, claimant returned to work as a traveling salesman on Tuesday, October 21, 1941, thereby losing at most only 2 days from work by reason of the alleged injuries.

Although the foregoing discloses that claimant sustained some injuries as a result of the negligence of the Work Projects Administration employee in failing to warn him of the impending explosion, his injuries do not appear to have been sufficiently grave to justify an appropriation in the amount set forth in the bill. In view thereof, your committee may desire to require claimant to submit to an examination by a Public Health Service physician with the view of obtaining a more comprehensive appraisal of the injuries.

Upon the evidence submitted, this Agency recommends enactment of the proposed legislation in an amount commensurate with the actual injuries sustained.

There are enclosed photostatic copies of pertinent papers from the files of the Work Projects Administration.

The Bureau of the Budget advises that, while there would be no objection to the enactment of legislation for the relief of this claimant, the enactment of a bill providing for the payment of a sum as great as \$5,000 would not be in accord with the program of the President, and that, it shares the view expressed in this report that further evidence should be submitted as to the extent of the claimant's incapacity for work.

Sincerely yours,

ALAN JOHNSTONE, *General Counsel.*

SMITHLAND, Ky., June 19, 1941.

IN THE MATTER OF GERALD ESTELL PROCTOR, 426 SOUTH HARRISON STREET,
PRINCETON, Ky.

AFFIDAVIT

STATE OF KENTUCKY,
County of Livingston, *Sct.:*

The affiant, Gerald Estell Proctor, states that he is 33 years of age; that his post-office address is 426 South Harrison Street, Princeton, Ky.; that on the 17th of October 1941, he was traveling for M. Livingston Co.; that he was driving along a Work Projects Administration road, No. 5882-70, known as the Paradise and Grove Chapel Road, in Livingston County, Ky., when an explosion of dynamite being used by the workers of said Work Projects Administration project, without warning or notice to him was touched off, or exploded when his car was very near to, or directly over said charge and his automobile was picked up and scooted quite a distance and the glass of the automobile was broken, the seams of the automobile were opened, the running gear and motor of said car were greatly damaged in divers respects; that said car was covered up with dirt and rock; that said automobile was a Studebaker make, 1941 model, having been run about 14,000 miles at that time; that the drive shaft of said car was bent and the wheels on the left side cupped under and the wheels were out of line and the motor about one-half inch out of line at that time; that he purchased the said car in April 1941 at a cost of nine hundred-odd dollars, from Vaughn & Vaughn Motor Co., of Paducah, Ky.; that in his effort to make said car reasonable he spent, at various times and places about \$150; that said car never would run satisfactory or naturally after said injury; that he finally about 2 months ago

let Vaughn & Vaughn have said car back, and on a trade-in Vaughn & Vaughn allowed him approximately \$500.

The affiant states that the accident occurred on Friday, October 17, 1941; that he did not work until the following Tuesday, October 21, 1941, at which time he went back to work although he was physically unable to do so; that he went to see Dr. E. R. Goodloe, Citizens Saving Bank Building, Paducah, Ky., shortly after the injury and was examined by him at that time and found that his eardrums were injured; that he had a slight concussion of the brain through the ears, and back and shoulders were injured; that he has been examined by Dr. E. R. Goodloe several times and he knows personally and by the advice of Dr. R. E. Goodloe that his hearing is permanently gone. He still suffers from his back, shoulders, and head; that at the time of the injury he was drawing \$190 per month from M. Livingston Co., as a traveling salesman in selling groceries, and that his expenses of approximately \$15 per week were deducted from said \$190; that in addition he was paid this last year a bonus of \$200 which was based on the sales of merchandise; that he is still drawing from M. Livingston Co. the same compensation for the same purpose; that he has received no payments from his employer, or any insurance company, or otherwise for his personal injuries, medical or hospital expense, or property damage sustained in the accident; however the Western Adjustment Insurance Co. of Citizens Savings Bank, of Paducah, Ky., allowed the finance company that was carrying his car \$150; it was credited on the purchase price of said car.

He states that he attributes all the personal injuries hereinabove set out to the accident, and knows that same are due to said accident for the reason that he was physically well and sound before the injury, that he had no defect of hearing, no trouble with his shoulders or back or head, and that he still suffers same from said injuries as hereinabove set out.

GERALD ESTELL PROCTOR,
Affiant.

Subscribed and sworn to before me by Gerald Estell Proctor this the 25th day of June 1942.

My commission of notary public will expire on the 2d of January 1946.
Given under my hand and notarial seal this the 25th day of June 1942.

L. L. WILSON,
Notary Public in and for Livingston County, Ky.

IN RE GERALD ESTELL PROCTOR, INJURY OF, 426 SOUTH HARRISON STREET,
PRINCETON, KY.
STATE OF KENTUCKY,
County of Livingston, Sct.:

AFFIDAVIT

The affiant, J. D. Clopton, Jr., states that he is well acquainted with the above named Gerald Estell Proctor, and has been for 5 years; that his post-office address is Smithland, Ky.; that he was acquainted with said Proctor prior to October 17, 1941, and knows by personal contact and by talking with him that his sense of hearing was normal, acute, and not impaired prior to October 17, 1941, the date of the injury to him and his car by an explosion of dynamite on the Work Projects Administration road in Livingston County, Ky.; that he is not related to the said Proctor by blood or marriage, and has no interest in the outcome of the claim being asserted by Mr. Proctor for his personal injury.

J. D. CLOPTON, JR., *Affiant.*

Subscribed and sworn to before me by J. D. Clopton, Jr., this the 27th day of July 1942.

My commission of notary public will expired on the 2d day of July, 1946.

L. L. WILSON, *Notary Public.*

IN RE GERALD ESTELL PROCTOR, INJURY OF, 416 SOUTH HARRISON STREET,
PRINCETON, KY.
STATE OF KENTUCKY,
County of Livingston, ss.:

AFFIDAVIT

The affiant, Mrs. M. L. Tabler, states that she is well acquainted with the above-named Gerald Estell Proctor, and has been for 5 years; that his post office address is Smithland, Ky.; that she was acquainted with said Proctor prior to October 17, 1942, and knows by personal contact and by talking with him that his sense of hearing was normal, acute, and not impaired prior to October 17, 1941, the date of the injury to him and his car by an explosion of dynamite on the Work Projects Administration road in Livingston County, Ky.; that she is not related to said Proctor by blood or marriage and has no interest in the outcome of the claim being asserted by Mr. Proctor for his personal injury.

Mrs. M. L. TABER,

Affiant.

Subscribed and sworn to before me by Mrs. M. L. Taber, this the 27th day of July 1942.

My commission of notary public will expire on the 2d day of January 1946.

L. L. WILSON, *Notary Public.*

AFFIDAVIT

STATE OF KENTUCKY,
County of Livingston, sct.:

The affiant, E. F. Mahan, states that he is well acquainted with the above-named Gerald Estell Proctor and has been for 5 years; that his post-office address is Smithland, Ky.; that he was acquainted with said Proctor prior to October 17, 1941, and knows by personal contact and by talking with him that his sense of hearing was normal, acute, and not impaired prior to October 17, 1941, the date of the injury to him and his car by an explosion of dynamite on the Work Projects Administration road in Livingston County, Ky.; that he is not related to the said Proctor by blood or marriage and has no interest in the outcome of the claim being asserted by Mr. Proctor for his personal injury.

E. F. MAHAN, *Affiant.*

Subscribed and sworn to before me by E. F. Mahan this the 27th day of July 1942.

My commission of notary public will expire on the 2d day of January 1946.

L. A. WILSON, *Notary Public.*

PADUCAH, KY., November 3, 1941.

Re G. E. Proctor, Paducah, Ky.; age, 33.
Mr. CHARLES H. WILSON,
Smithland, Ky.

This above-named man came to my office for examination and treatment due to an injury sustained somewhere in Livingston County, due to an unexpected explosion of dynamite along the highway over which he was traveling, which caused temporary loss of consciousness (concussion of the brain), which left him in a dazed condition for several hours, and deafness of both ears caused by this explosion of dynamite.

I examined this man in my office again Saturday, November 1, 1941. The deafness in one ear is still pronounced and I think recovery will be slow.

I cannot tell how long this condition may continue.

E. R. GOODLOE, M. D.

PADUCAH, KY., May 26, 1942.

Re G. E. Proctor.
Mr. C. H. WILSON,
Smithland, Ky.

DEAR SIR: This is to certify that I have again examined the above-named patient, and find that there is no improvement noticeable in the condition of his

hearing. He is unable to detect ordinary sound or conversation at any usual distance. I think his injury has resulted in a partial deafness, and is permanent.
Respectfully yours,

E. R. GOODLOE.

PADUCAH, KY., June 24, 1942.

Re G. E. Proctor, 426 South Harrison, Princeton, Ky.

ATTORNEY CHARLES H. WILSON,
Smithland, Ky.

DEAR SIR: This is to certify that about November 1, 1941, I was consulted by the above named for injury, which he received October 17, 1941, while driving along the highway in Livingston County, Ky. After a history of the injury was given me, I made a physical examination and found him to be practically deaf with a perforation in the tympanum of the left ear. This condition doubtless happened at the time of the injury due to concussion produced by the explosion of the dynamite. I also found that his power of balance was disturbed. It was difficult for him to walk without losing his power of balance. I continued to treat him and observe him for several weeks with little or no improvement with regard to his hearing in the left ear.

I think this injury has produced a deafness and perhaps other remote changes which are permanent and so far as I know, incurable.

Respectfully yours,

E. R. GOODLOE.

PADUCAH, KY., July 17, 1942.

Re examination G. E. Proctor, Princeton, Ky.

To Whom It May Concern:

On examination of the above named I found the left ear drum (tympanum) ruptured and discharging a bloody, serous fluid. The right ear drum was not ruptured but was very much inflamed and infected.

The left ear drum remained patulous several days before closing. This condition has resulted in a permanent impairment in hearing, especially in the left ear.

E. R. GOODLOE, M. D.

RE GERALD ESTELL PROCTOR, 426 SOUTH HARRISON STREET, PRINCETON, KY.

AFFIDAVIT

STATE OF KENTUCKY,
McCracken County, Sct.:

The affiant, Dr. E. R. Goodloe, states that he is a regular licensed physician; that he is a graduate of University of Nashville (Reg.) medical school; that he has been engaged in the practice of medicine at Paducah, Ky., for many years; that his office is located at 718-719 Citizens Bank Building, Paducah, Ky.; that he is acquainted with Gerald Estell Proctor, the party named in the caption; that on or about November 1, 1941, he was consulted by the above-named for an injury, which he received October 17, 1941, while driving along the highway in Livingston County, Ky. After a history of the injury was given me I made a physical examination and found him to be practically deaf with the perforation in the tympanum of the left ear. This condition doubtless happened at the time of the injury due to concussion produced by the explosion of the dynamite. I also found that his power of balance was disturbed. It was difficult for him to walk without losing his balance. I continued to treat him and observe him for several weeks with little or no improvement with regard to his hearing in the left ear.

I think this injury has produced a deafness and perhaps other remote changes which are permanent and so far as I know incurable.

E. R. GOODLOE, M. D.,
Affiant.

Subscribed and sworn to before me by Dr. E. R. Goodloe this the 18th day of July 1942.

My commission of notary public will expire on the 7th day of February 1944.
Given under my hand and notarial seal this the 18th day of July 1942.

MYRTLE K. SWINNEY,
Notary Public in and for McCracken County.

SMITHLAND, KY., October 26, 1942.

Re Gerald Estell Proctor, personal injury, H. R. 7308, introduced by Hon. Noble J. Gregory, M. C.

Hon. WILLIAM E. LINDEN,
*General Counsel, Work Projects Administration,
Washington, D. C.*

Hon. NOBLE J. GREGORY, M. C.,
Washington, D. C.

Hon. ALBEN W. BARKLEY,
United States Senator, Washington, D. C.

GENTLEMEN: Under date of September 28, 1942, Hon. Noble J. Gregory wrote me in part as follows:

They say they have sought from Mr. Proctor and the attending physician some additional information which has not been supplied. They have now recommended that he be examined by a Public Health Service physician as to his condition and as soon as this examination is completed they will be in position to give further attention to this claim."

I, from time to time, have supplied every affidavit, recommendation, and other information requested of me in this matter.

I am now enclosing a certificate of Dr. E. R. Goodloe of 718-719 Citizens Bank Building, Paducah, Ky., and Dr. C. E. Reddick, the doctor of McCracken County Health Department, of date October 24, 1942, which is requested in the above-quoted paragraph.

I am sending the original to Hon. William E. Linden and copies to Hon. Alben W. Barkley and Noble J. Gregory for their files. I trust this matter will be followed up to an earlier completion.

Very cordially yours,

C. H. WILSON,
Attorney for Gerald Estell Proctor.

PADUCAH, KY., July 16, 1942.

Re examination: G. E. Proctor, Princeton, Ky.

To Whom It May Concern:

On examination of the above named I found the left ear drum (tympanum) ruptured and discharging a bloody, serous fluid. The right ear drum was not ruptured but was very much inflamed and injected.

The left ear drum remained patulous several days before closing. This condition has resulted in a permanent impairment in hearing, especially in the left ear.

E. R. GOODLOE, M. D.

MCCRACKEN COUNTY HEALTH DEPARTMENT,
Paducah, Ky., October 24, 1942.

Mr. G. E. Proctor,
Paducah, Ky.:

This letter is to confirm the statement made by Dr. E. R. Goodloe, Paducah, regarding your condition due to injury received by explosion of dynamite, October 17, 1941.

I find there is a partial deafness in the left ear and complete deafness in the right ear.

Very truly yours,

C. E. REDDICK, M. D.,
Director, McCracken County Health Department.

THE STATE OF NEW YORK
IN SENATE
January 10, 1912.
REPORT
OF THE
COMMISSIONERS OF THE DEPARTMENT OF HEALTH,
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
MAY 15, 1911.

ALBANY:
J. B. LIPPINCOTT COMPANY,
1912.

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IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
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